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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/253,418	02/19/1999	WILLIAM PAUL SHERER	9764-82-1	5569
7590 07/02/2004			EXAMINER	
JOHN P. WAGNER WAGNER MURABITO & HAO LLP TWO NORTH MARKET STREET THIRD FLOOR SAN JOSE, CA 95113			NGUYEN, TOAN D	
			ART UNIT	PAPER NUMBER
			2665	28

DATE MAILED: 07/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/253,418

Applicant(s)

SHERER ET AL.

Examiner

Toan D Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 08 April 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-3, 6-10 and 16-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6-10 and 16-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 27 February 2004 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).
3. Claims 1-3, 6-10 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fichou et al. (US 5,602,830) in view of Widjaja et al. (US 5,406,556).

For claim 1, Fichou et al. disclose method and an apparatus for shaping the output traffic in a fixed length cell switching network node, comprising:

a first interface (figure 7, reference 30, col. 14 line 7) for receiving data packets in a first order, wherein a first plurality of said data packets have a first destination address corresponding to a first destination and a second plurality of said data packets have a second destination address corresponding to a second destination, wherein said first destination address and said second

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destination address represent ultimate destination of said first and second pluralities of data packets, respectively (figure 4, col. 7 lines 54-64);

a second interface (figure 7, reference 200, col. 14 line 8) for transmitting said data packets to said first and second destination (col. 14 lines 3-8); and

a mechanism (figure 7, reference 20) for selecting from said data packets according to their respective destination addresses, and then selecting at least one data packet having said second destination address such that during said transmitting said data packets are essentially evenly distributed between said first and second destination (col. 14 lines 10-61).

However, Fichou et al. do not disclose establishing a second order for transmitting said data packets that is different from said first order, said second order based on respective destination addresses of said data packets, said second order established by first selecting at least one data packet having said first destination address. In an analogous art, Widjaja et al. disclose establishing a second order (figure 3, reference 80) for transmitting said data packets that is different from said first order (figure 3, reference 60), said second order (reference 80) based on respective destination addresses of said data packets, said second order (reference 80) established by first selecting at least one data packet having said first destination address (col. 6 lines 58-61).

One skilled in the art would have recognized establishing a second order (figure 3, reference 80) for transmitting said data packets that is different from said first order (figure 3, reference 60), said second order (reference 80) based on respective destination addresses of said data packets, said second order (reference 80) established by first selecting at least one data packet having said first destination address to use the teachings of Widjaja et al. in the system of Fichou et al. Therefore, it would have been obvious to one of ordinary skill in the art at the time

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of the invention to use the establishing a second order (figure 3, reference 80) for transmitting said data packets that is different from said first order (figure 3, reference 60), said second order (reference 80) based on respective destination addresses of said data packets, said second order (reference 80) established by first selecting at least one data packet having said first destination address as taught by Widjaja et al. in Fichou et al.'s system with the motivation being to provide the packets in e1, e2, ..., eN are ordered according to destination address (col. 7 lines 23-27).

For claim 2, Fichou et al. disclose said selecting is determined solely by said first and second destination address (col. 14 lines 12-33).

For claim 3, Fichou et al. disclose said selecting is determined partly by said first and second destination address and partly by when a packet is received by said interface (figure 7, col. 14 lines 3-33).

For claim 6, Fichou et al. disclose method and an apparatus for shaping the output traffic in a fixed length cell switching network node, comprising:

receiving data packets in a first order, wherein a first plurality of said data packets have a first destination address corresponding to a first destination and a second plurality of said data packets have a second destination address corresponding to a second destination, wherein said first destination address and said second destination address represent ultimate destination of said first and second pluralities of data packets, respectively (figure 4, col. 7 lines 54-64);

selecting at least one data packet having said second destination address such that during said transmitting said data packets are essentially evenly distributed between said first and second destination (col. 14 lines 10-61). and transmitting said data packets.

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However, Fichou et al. do not disclose prior to transmitting said data packets, establishing a second order for transmitting said data packets that is different from said first order, said second order based on respective destination addresses of said data packets, said second order established by first selecting at least one data packet having said first destination address; and transmitting said data packets. In an analogous art, Widjaja et al. disclose prior to transmitting said data packets, establishing a second order (figure 3, reference 80) for transmitting said data packets that is different from said first order (figure 3, reference 60), said second order (reference 80) based on respective destination addresses of said data packets, said second order (reference 80) established by first selecting at least one data packet having said first destination address (col. 6 lines 58-61); and transmitting said data packets (col. 7 lines 25-27).

One skilled in the art would have recognized prior to transmitting said data packets, establishing a second order (figure 3, reference 80) for transmitting said data packets that is different from said first order (figure 3, reference 60), said second order (reference 80) based on respective destination addresses of said data packets, said second order (reference 80) established by first selecting at least one data packet having said first destination address to use the teachings of Widjaja et al. in the system of Fichou et al. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to use the establishing a second order (figure 3, reference 80) for transmitting said data packets that is different from said first order (figure 3, reference 60), said second order (reference 80) based on respective destination addresses of said data packets, said second order (reference 80) established by first selecting at least one data packet having said first destination address as taught by Widjaja et al. in Fichou et al.'s system

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with the motivation being to provide the packets in e1, e2, ..., eN are ordered according to destination address (col. 7 lines 23-27).

For claim 7, Fichou et al. disclose said selecting is determined solely by said first and second destination address (col. 14 lines 12-33).

For claim 8, Fichou et al. disclose wherein said establishing is determined partly by said first and second destination address and partly by when a packet is received by said interface (figure 7, col. 14 lines 3-33).

For claim 9, Fichou et al. disclose wherein said establishing is determined by a preset, nonadjustable scheme (col. 14 lines 3-10).

For claim 10, Fichou et al. disclose wherein said establishing is determined by a programmable scheme which takes into account differences in speed and performance paths to particular destination to maximize network parallelism (col. 14 lines 12-17).

For claim 16, Fichou et al. disclose method and an apparatus for shaping the output traffic in a fixed length cell switching network node, comprising:

a first interface (figure 7, reference 30) for receiving data packets in a first order, wherein a first plurality of said data packets have a first destination address corresponding to a first destination and a second plurality of said data packets have a second destination address corresponding to a second destination, wherein said first destination address and said second destination address represent ultimate destination of said first and second pluralities of data packets, respectively (figure 4, col. 7 lines 46-49, col. 7 lines 54-64);

a second interface (figure 7, reference 200, col. 14 line 8) for transmitting said data packets to said first and second destination (col. 14 lines 3-8); and

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wherein said device (figure 7, reference 20) executes a driver (figure 7, reference 235) that selects from said data packets according to their respective destination addresses and then selecting at least one data packet having said second destination address such that during said transmitting said data packets are essentially evenly distributed between said first and second destinations (col. 14 lines 10-61).

However, Fichou et al. do not disclose establishing a second order for transmitting said data packets that is different from said first order, said second order based on respective destination addresses of said data packets, said second order established by first selecting at least one data packet having said first destination address. In an analogous art, Widjaja et al. disclose establishing a second order (figure 3, reference 80) for transmitting said data packets that is different from said first order (figure 3, reference 60), said second order (reference 80) based on respective destination addresses of said data packets, said second order (reference 80) established by first selecting at least one data packet having said first destination address (col. 6 lines 58-61).

One skilled in the art would have recognized establishing a second order (figure 3, reference 80) for transmitting said data packets that is different from said first order (figure 3, reference 60), said second order (reference 80) based on respective destination addresses of said data packets, said second order (reference 80) established by first selecting at least one data packet having said first destination address to use the teachings of Widjaja et al. in the system of Fichou et al. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to use the establishing a second order (figure 3, reference 80) for transmitting said data packets that is different from said first order (figure 3, reference 60), said second order (reference 80) based on respective destination addresses of said data packets, said second order



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(reference 80) established by first selecting at least one data packet having said first destination address as taught by Widjaja et al. in Fichou et al.'s system with the motivation being to provide the packets in e1, e2, ..., eN are ordered according to destination address (col. 7 lines 23-27).

For claim 17, Fichou et al. disclose said selecting is determined solely by said first and second destination address (col. 14 lines 12-33).

For claim 18, Fichou et al. disclose wherein said driver selects from said data packets partly by said first and second destination address and partly by when a packet is received by said interface (figure 7, col. 14 lines 3-33).

***Response To Arguments***

4. Applicant's arguments filed on April 08, 2004 have been fully considered but are moot in view of new ground(s) of rejection.

***Contact Information***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Toan D Nguyen whose telephone number is 703-305-0140. The examiner can normally be reached on Monday- Friday (7:00AM-4:30PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Huy Vu can be reached on 703-308-6602. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9314 for regular communications and 703-872-9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-9600.

TN  
T.N.

**DUCHO  
PRIMARY EXAMINER**

*Duchou*  
6-28-04